NOTES OF CASES.

Unlicensed Automobiles—No Damages for Injuring.—It is to be hoped that the decision of the Supreme Judicial Court of Massachusetts in Holden *v.* McGillicuddy, 702 N. E., 923, will find no disciples in other jurisdictions. The plaintiff there sued for damages caused by the defendant negligently causing a collision between the automobiles the parties were driving on a public highway, and a verdict and judgment for the plaintiff were reversed and the cause remanded with directions to enter judgment for the defendant, on the ground that the plaintiff, having failed to secure a license for his machine, as required by law, was a trespasser on the highway, and the defendant owed him no duty save that of refraining from wantonly injuring him.

The accident occurred in Vermont, and the law of that state provided that no automobile or motor vehicle should be operated upon a public highway unless registered. The plaintiff was, therefore, unquestionably a trespasser, so far as the state or the municipal subdivision thereof which would be responsible, if anyone at all, for any injury which he might receive by reason of the conditions of the road, was concerned, and could not recover damages, no matter what that condition might be, unless it was due to the wanton and wilful negligence of the public authorities chargeable with its care and unkeep. But what semblance of reason is there for extending to others, lawfully on the road, this immunity from responsibility which the law justly and properly grants to the owner of the premises on which the injury is received by the trespasser? The one is a licensee, it is true, and the other is a trespasser; but does this relation to the owner or custodian of the highway, give one of them a right to injure the other, or absolve him from the duty of exercising reasonable care to avoid doing so, while himself remaining clothed with the right to have his safety and the safety of his property respected? On the contrary, it is expressly laid down in two states that only the owner of the premises on which the injury occurs is entitled to the exemption from liability. Cameron *v.* Vandegrift, 53 Ark. 381; Commonwealth Electric Co. *v.* Melville, 210 Ill. 70. We do not much esteem what are irreverently known as "dog cases," but as some courts do not seem to be able to make up their minds on a point of principle unless it has been applied in a case involving the identical facts of the case before them, we beg to call the attention of such courts to the decision of the Florida court in Coast Line R. Co. *v.* Weir, 63 Fla. 69, which was a case involving injury to an unlicensed automobile.

The Massachusetts court rests its decision on a previous decision of its own, and apparently has been unable to find any decision in any other jurisdiction, either on the general principle of injury to

a trespasser by one other than the owner of the premises, or on the specific instance of injury to an unlicensed vehicle using a public highway, which accords with its views. This earlier decision is said to be based on the Massachusetts statute, and in so far as there is anything peculiar in that statute not found in the Vermont statute, above cited in its own words, although not quoted, it can not be looked to as authority in the application of the latter statute. Moreover, it is obvious that the prohibition of the Vermont statute against unlicensed automobiles using the public highway, adds nothing to its scope, since the mere requirement that the owner shall take out a license, under penalty, amounts to a prohibition of the use of the highway.

The denial of a remedy for a wrong, because of a violation of a statutory duty, is one of the crudest means which have been or could be devised to compel compliance with the statute, for the simple reason that the penalty bears no proportion to the offense. The instant case well illustrates the argument. The plaintiff might have been killed and his automobile converted into junk by the defendant's negligence, yet under the rule laid down by the Massachusetts court, he and his heirs would have been without remedy, merely because he had put off until the following day the procuring of a license for his machine. The courts, instead of preserving and extending this remnant from the day of trial by ordeal and wager of battle, should restrict it within the narrowest limits, and use their influence to procure its abolition.—National Corporation Reporter.

Liability of Estate for Tort of Administrator.—J. A. Aul at the time of his death was a member of a burial association which by its policy bound itself to furnish him burial to cost not exceeding $100. It failed to do so, and his administrator sued for the amount of the policy and costs. The defense was that the administrator and undertaker had conspired to prevent the association from burying deceased, which injured its standing and membership in the sum of $300, for which amount judgment was prayed. In dismissing an appeal by defendant for want of jurisdiction as involving less than $200, the Court of Appeals of Kentucky in National Co-Operative Burial Ass'n *v.* Aul's Adm'r, 161 Southwestern Reporter, 1123, held that the conduct of the administrator and undertaker was a personal wrong on their part for which the estate was not liable.